

purchase threshold and not greater than the simplified acquisition threshold entered into by the Government during the preceding fiscal year through a system with full FACNET capability, the Administrator shall certify to Congress that the Government has implemented a Government-wide FACNET capability.

**(c) Implementation of interim FACNET capability**

A procuring activity shall be considered to have implemented an interim FACNET capability if—

(1) with respect to each procurement expected to be in an amount greater than the micro-purchase threshold and not greater than the simplified acquisition threshold, the procuring activity has implemented the FACNET functions described in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and (2)(C) of section 426(b) of this title; and

(2) for each such procurement (other than a procurement for which notice is not required under section 416(c) of this title or with respect to which the head of the procuring activity determines that it is not cost effective or practicable), the procuring activity issues notices of solicitations and receives responses to solicitations through a system having those functions.

**(d) Implementation of full FACNET capability**

An executive agency shall be considered to have implemented a full FACNET capability if (except in the case of procuring activities (or portions thereof) of the executive agency for which the head of the executive agency determines that implementation is not cost effective or practicable)—

(1) the executive agency has implemented all of the FACNET functions described in section 426(b) of this title; and

(2) more than 75 percent of the eligible contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold entered into by the executive agency during the preceding fiscal year have been made through a system with those functions.

**(e) Eligible contracts**

For purposes of subsections (b) and (d) of this section, a contract is eligible if it is not in any class of contracts determined by the Federal Acquisition Regulatory Council (pursuant to section 9004 of the Federal Acquisition Streamlining Act of 1994) to be unsuitable for acquisition through a system with full FACNET capability.

(Pub. L. 93–400, §30A, as added Pub. L. 103–355, title IX, §9001(a), Oct. 13, 1994, 108 Stat. 3400.)

REFERENCES IN TEXT

Section 9004 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (e), is section 9004 of Pub. L. 103–355, which is set out below.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

GAO DETERMINATION OF ELIGIBLE AGENCY CONTRACTS

Section 9004 of Pub. L. 103–355 provided that:

“(a) REPORT ON CONTRACTS NOT SUITABLE FOR ACQUISITION THROUGH FULL FACNET CAPABILITY.—Not later than 3 years after the date of the enactment of this Act [Oct. 13, 1994], the Comptroller General shall submit to the Administrator for Federal Procurement Policy and the congressional committees referred to in subsection (d) a report on the classes of contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold that are not suitable for acquisition through a system with full FACNET capability.

“(b) FAR COUNCIL DETERMINATIONS.—Not earlier than 3 years after the date of the enactment of this Act [Oct. 13, 1994], and after consideration of the report of the Comptroller General required by subsection (a), the Federal Acquisition Regulatory Council (established by section 25 of the Office of Federal Procurement Policy Act [41 U.S.C. 421]) may make a determination that a class or classes of contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold are not suitable for acquisition through a system with full FACNET capability. Any such determination shall be submitted to the congressional committees referred to in subsection (d). Each determination under this subsection shall take effect 60 days after the date on which it is submitted to those committees.

“(c) APPLICABILITY OF DETERMINATIONS.—Each determination under subsection (b) shall apply for purposes of determining eligible contracts under section 30A(e) of the Office of Federal Procurement Policy Act, as added by section 9001 [41 U.S.C. 426a(e)].

“(d) COMMITTEES.—The report required by subsection (a), and any determination made under subsection (b), shall be submitted to the Committees on Governmental Affairs, on Armed Services, and on Small Business of the Senate and the Committees on Government Operations [now Government Reform and Oversight], on Armed Services [now National Security], and on Small Business of the House of Representatives.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘simplified acquisition threshold’ has the meaning provided by section 4(11) of the Office of Federal Procurement Policy Act [41 U.S.C. 403(11)], as amended by section 4001.

“(2) The term ‘micro-purchase threshold’ has the meaning provided by section 32(g) of the Office of Federal Procurement Policy Act [41 U.S.C. 428(g)], as added by section 4301.

“(3) The term ‘full FACNET capability’ has the meaning described in section 30A(d) of the Office of Federal Procurement Policy Act [41 U.S.C. 426a(d)], as added by section 9001(a).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 426, 427 of this title; title 15 section 637.

**§ 427. Simplified acquisition procedures**

**(a) Requirement**

In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for contracts for acquisition of property and services that are not greater than the simplified acquisition threshold.

**(b) Prohibition on dividing purchases**

A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified acquisition procedures required by subsection (a) of this section.

**(c) Promotion of competition required**

In using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.

**(d) Consideration of offers timely received**

The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

**(e) Special rules for use of simplified acquisition procedures****(1) Effect of interim FACNET capability**

The simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may not be used by a procuring activity of an agency for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold until a certification has been made pursuant to section 426a(a)(1) of this title that the procuring activity has implemented an interim FACNET capability.

**(2) Effect of full FACNET capability**

(A)(i) In the case of a procuring activity described in clause (ii), the simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may be used by the activity for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold.

(ii) Clause (i) applies to any procuring activity—

(I) that has not certified, pursuant to section 426a(a)(1) of this title, that it has implemented interim FACNET capability; and

(II) that is in an agency that has excluded the procuring activity from the agency's full FACNET certification under section 426a(a)(2) of this title on the basis that implementation of full FACNET capability would not be cost effective or practicable in that activity.

(B) The simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may not be used by an agency after December 31, 1999, for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold until a certification has been made pursuant to section 426a(a)(2) of this title that the agency has implemented a full FACNET capability.

**(f) Interim reporting rule**

Until October 1, 1999, procuring activities shall continue to report under section 417(d) of this title procurement awards with a dollar value of at least \$25,000, but less than \$100,000, in conformity with the procedures for the reporting of a contract award greater than \$25,000 that were in effect on October 1, 1992.

(Pub. L. 93-400, §31, as added Pub. L. 103-355, title IV, §4201(a), Oct. 13, 1994, 108 Stat. 3342.)

**EFFECTIVE DATE**

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective

Date of 1994 Amendment note under section 251 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 252b of this title; title 10 section 2302b.

**§ 428. Procedures applicable to purchases below micro-purchase threshold****(a) Requirements**

(1) The head of each executive agency shall ensure that procuring activities of that agency, in awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 637(a) of title 15, section 2323 of title 10, and section 7102 of the Federal Acquisition Streamlining Act of 1994.

(2) The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to any purchases with a price exceeding the micro-purchase threshold.

**(b) Exclusion for micro-purchases**

A purchase by an executive agency with an anticipated value of the micro-purchase threshold or less is not subject to section 644(j) of title 15 and the Buy American Act (41 U.S.C. 10a-10c).

**(c) Applicability of certain provisions**

For purposes of section 423 of this title, an officer or employee of an executive agency, or a member of the Armed Forces of the United States, shall not be considered a procurement official if—

(1) the contracting authority of the officer, employee, or member does not exceed \$2,500; and

(2) the head of the contracting activity concerned (or a designee of the head of the contracting activity concerned) determines that the duties of the position of that officer, employee, or member are such that it is<sup>1</sup> unlikely that the officer, employee, or member will be required to conduct procurements in a total amount greater than \$20,000 in any 12-month period.

**(d) Purchases without competitive quotations**

A purchase not greater than \$2,500 may be made without obtaining competitive quotations if the contracting officer determines that the price for the purchase is reasonable.

**(e) Equitable distribution**

Purchases not greater than \$2,500 shall be distributed equitably among qualified suppliers.

**(f) Implementation through FAR**

This section shall be implemented through the Federal Acquisition Regulation.

**(g) Micro-purchase threshold defined**

For purposes of this section, the micro-purchase threshold is the amount of \$2,500.

(Pub. L. 93-400, §32, as added Pub. L. 103-355, title IV, §4301(a), Oct. 13, 1994, 108 Stat. 3346.)

**REFERENCES IN TEXT**

Section 7102 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (a)(1), is section 7102

<sup>1</sup> So in original. Probably should be "it is".